

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Hearing Date and Time
December 18, 2024 at 10:30 a.m.

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In Re:

Chapter 11

ALEXA & ROGER INC,

Case No. 23-44441 (JMM)

Debtor.

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**NOTICE OF MOTION FOR ENTRY OF ORDER DEEMING
LEASE OF NON-RESIDENTIAL REAL PROPERTY BY
AND BETWEEN THE DEBTOR AND GROWTH MINDSET
LEARNING LAB, LLC TO BE REJECTED**

PLEASE TAKE NOTICE, that a hearing (the “Hearing”) will be held before the Honorable Jil Mazer-Marino, United States Bankruptcy Judge, on **December 18, 2024 at 10:30 a.m.** or as soon as possible thereafter as counsel can be heard (the "Hearing Date"), to consider the application of Fairbridge Strategic Capital LLC f/k/a RealFi Strategic Cap LLC (“Fairbridge”), secured creditor and proponent of Fairbridge’s Chapter 11 Plan for Alexa & Roger Inc., dated July 2, 2024 [ECF Doc #48], seeking the entry of an order (i) deeming a lease of non-residential real property by and between Alexa & Roger Inc., the debtor in this confirmed Chapter 11 case (the “Debtor”), as lessor, and Growth Mindset Learning Lab, LLC, as tenant, to be rejected; and (ii) granting Fairbridge such other and further relief as may be just and proper (the “Application”).

PLEASE TAKE FURTHER NOTICE that the Hearing may be held in person, by phone, or by videoconference. Regardless of whether you intend to appear in person, by phone, or by videoconference, those intending to appear at the Hearing must register with eCourt Appearances no later than two (2) days prior to the Hearing. The phone number or video link for the Hearing will be emailed only to those that register with Court Appearances in advance of the Confirmation Hearing. Instructions for registering with eCourt Appearances can be found at

<https://www.nyeb.uscourts.gov/node/2126>. If you do not have internet access or are otherwise unable to register with eCourt Appearances, you may call or email Judge Mazer-Marino's courtroom deputy for instructions at (347) 394-1844, JMM_Hearings@nyeb.uscourts.gov.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief sought in the Application, must be in writing setting forth the facts and authorities upon which an objection is based, filed with the Clerk of the Court, United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, NY 11201, provided, however, that pursuant to *general order* No. M-182 re Electronic Case Filing Procedures (as amended from time to time), entities with Internet access shall file objections (formatted with Adobe Acrobat, rider 3.0) at <http://www.nyeb.uscourts.gov>., and served so as to be received by: (i) the attorneys for Fairbridge, Sahn Ward Braff Coschignano PLLC, 333 Earle Ovington Blvd, Suite 601, Uniondale, New York, Attn: Joel M. Shafferman, Esq.; (ii) the attorneys for the Debtor, Richard S. Feinsilver, Esq. One Old Country Road, Suite 347, Carle Place, New York 11514; and (iii) the Office of the United States Trustee, Eastern District of New York, 201 Varick Street, Suite 1006, New York, New York 10004, Attn: Shannon Scott, Esq., no later than seven (7) days prior to the Hearing Date.

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned from time to time without further notice except by announcement of such adjournment in open court on the date scheduled for the Hearing.

DATED: Uniondale, New York
November 18, 2024

Sahn Ward Braff Coschignano PLLC
Attorneys for Fairbridge Strategic Capital LLC
By: /s/ Joel M. Shafferman
Joel M. Shafferman, Of Counsel
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Hearing Date and Time
December 18, 2024 at 10:30 a.m.

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In Re:

Chapter 11

ALEXA & ROGER INC,

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**APPLICATION FOR ENTRY OF ORDER DEEMING
LEASE OF NON-RESIDENTIAL REAL PROPERTY BY
AND BETWEEN THE DEBTOR AND GROWTH MINDSET
LEARNING LAB, LLC TO BE REJECTED**

**TO: THE HONORABLE JIL MAZER-MARINO,
UNITED STATES BANKRUPTCY JUDGE:**

Fairbridge Strategic Capital LLC f/k/a RealFi Strategic Cap LLC (“Fairbridge” or “Plan Proponent”), secured creditor and proponent of Fairbridge’s Chapter 11 Plan for Alexa & Roger Inc., dated July 2, 2024 [ECF Doc #48] (“Fairbridge”), seeks the entry of an order deeming a lease of non-residential real property dated September 1, 2022, by and between Alexa & Roger Inc., the debtor in this confirmed Chapter 11 case (the “Debtor”), as lessor, and Growth Mindset Learning Lab, LLC (“Growth”), as tenant (the “Lease”), a copy of which is attached hereto as **Exhibit “A”**, related to a commercial space located within premises known as and by the street address 381 Myrtle Avenue, Brooklyn, New York 11201 (the “Property”), to be rejected; and (ii) granting Fairbridge such other and further relief as may be just and proper. In support thereof, Fairbridge respectfully states:

JURISDICTION

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Eastern

District of New York. This is a core proceeding under 28 U.S.C. §157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested by this Motion are sections 365(a) and 901 of the Bankruptcy Code, Rule 6006 of the Federal Rule of Bankruptcy Procedure and Local Rule 6006-1.

BACKGROUND

3. On December 1, 2023 (the “Filing Date”), Alexa & Roger Inc., the debtor in the above-captioned confirmed Chapter 11 case (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United State Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of New York. The Debtor’s Schedule G does not list any leases or executory contracts.

4. Fairbridge is the Debtor’s major creditor, holding a prepetition secured claim, in the amount of \$2,925,272.93.

5. The Debtor has continued in possession of the Property as a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official creditors’ committee has been appointed in this Chapter 11 case. The Debtor’s sole asset is the Property which is a mixed-use property. The Property consists of a commercial unit on the ground floor and residential units on the 2nd and 3rd floors, one of which is not permitted.

6. Shortly after the Filing Date, counsel for Fairbridge and the Debtor discussed selling the Property pursuant to a liquidating plan of reorganization as being the best exit scenario for this case.

7. On April 23, 2024, Fairbridge filed its Chapter 11 plan for the Debtor [ECF Doc

#35] and accompanying disclosure statement [ECF Doc #36]. On July 3, 2024, Fairbridge filed its amended Chapter 11 plan for the Debtor [ECF Doc #48] (the “Plan”) and accompanying amended disclosure statement [ECF Doc #49] (the “Disclosure Statement”).

8. As the means of implementation of the Plan, Marcus & Millichap (“M&M”), the broker approved by this Court, extensively marketed the Property for many months, and the only serious offer that M&M received was the proposal made by Yoel Deutsch and Brenda Deutsch (collectively, “Deutsch”), which was formalized in a contract of sale (the “Contract”). The purchase price to be paid by Deutsch for the Property under the Contract is \$2,650,000.00.

9. On July 10, 2024, the Court entered an order [ECF Doc #51] conditionally approving the Disclosure Statement and scheduling a hearing to consider final approval of the Disclosure Statement and confirmation of the Plan.

10. On July 22, 2024, Fairbridge filed a motion to sell the Property free and clear of liens to Deutsch pursuant to sections 105(a) and 363(b), (f) and (m), 1123(a)(5)(D), and 1141(c) of the Bankruptcy Code and pursuant to the Plan (the “Sale Approval Motion”).

11. A hearing was held on August 7, 2024, at which time this Court: (i) approved the Disclosure Statement, on a final basis; (ii) confirmed the Plan; and (iii) approved the Sale Motion. Fairbridge settled appropriate orders on all creditors and the Office of the United States Trustee pursuant to Rule 9072-1 of the Local Rules for the United States Bankruptcy Court for the Eastern District of New York [ECF Doc ##66 & 67].

12. On October 28, 2024, this Court entered an order confirming the Plan and approving the Sale Motion [ECF Doc. ##69 & 70].

13. Within the last few weeks, Fairbridge learned of the existence of the Lease, as it

was not listed on the Debtor's Schedule G nor otherwise disclosed by the Debtor.

ARGUMENT

14. In accordance with section 365(a) and section 901 of the Bankruptcy Code, Rule 6006 of the Federal Rules of Bankruptcy Procedure, and Local Rule 6006-1, the Plan Proponent has filed this motion seeking the entry of an order deeming the Lease to be rejected, as of April 1, 2024¹.

15. Section 365(a) of the Bankruptcy Code allows a debtor, subject to the Court's approval, to "assume or reject any executory contract or unexpired lease of the debtor."

16. Section 365(d)(4)(A) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor may assume or reject leases of non-residential real property under which the debtor is the lessee. See 11 U.S.C. § 365(d)(4)(A).

17. Section 365(d)(4)(A) & (B) of the Bankruptcy Code further provides that:

an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

(i) the date that is 120 days after the date of the order for relief or

(ii) the date of the entry of an order confirming a plan.

18. The Debtor never filed a motion in this case seeking either to assume the Lease or to extend its time to assume or reject the Lease. Therefore, pursuant to section 365(d)(4)(A) and (B), this Court should deem the Lease to have been rejected, by operation of law, on Monday,

¹ April 1, 2024, was the 121st day of this case. The 120th day of this case fell on Sunday, March 30, 2024.

April 1, 2024, the 121st day of this case.

19. Additionally, according to the operating reports for the months of February, March, April, May, and June 2024, which are the only operating reports filed in this case, the Debtor did not receive any revenue during those months. Therefore, Growth is in default under the Lease and, for that reason as well, the Lease should be deemed rejected.

20. The Plan Proponent also requests that, notwithstanding Bankruptcy Rule 6004 or otherwise, an order granting this Application shall be effective and enforceable immediately upon entry and its provisions shall be self-executing so that the Plan Proponent can proceed to close the sale transaction approved by this Court and contemplated in the Plan.

FORM OF NOTICE

21. Fairbridge will serve this application and accompanying exhibits by first-class mail upon (i) the United States Trustee, (ii) Growth; (iii) counsel to Deutsch, (iv) all creditors, and (v) all other parties that have filed a notice of appearance in this case. Fairbridge requests that this Court find such notice to be good and sufficient pursuant to Bankruptcy Rules 2002, 6004 and 9019.

22. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, it is respectfully requested that this Court enter an order, a copy of which is attached hereto as **Exhibit “B”**: (i) deeming the Lease to be rejected; and (ii) granting Fairbridge such other and further relief as this Court may deem just and proper.

DATED: Uniondale, New York
November 18, 2024

Sahn Ward Braff Coschignano PLLC
Attorneys for Fairbridge Strategic
Capital LLC

By: /S/ Joel M. Shafferman
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